APPENDIX

Supreme Court, U.S.
FILED
JAN

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

* * *

NO. 76, ORIGINAL

* * *

STATE OF CALIFORNIA,

Plaintiff,

V.

STATE OF TEXAS,

Defendant

* * *

ON MOTION FOR LEAVE TO FILE COMPLAINT

* * *

BRIEF IN OPPOSITION

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APPENDIX A

STATE OF CALIFORNIA

FRANCHISE TAX BOARD

SACRAMENTO, CALIFORNIA 95867

Telephone: (916) 355-0292

January 21, 1977

RECEIVED
STATE COMPTROLLER
JAN 25 1977
REVENUE PROCESSING
AUSTIN, TEXAS

Randall B. Wood
Chief Clerk
Deputy Comptroller
Comptroller of Public Accounts
State of Texas
Austin, Texas 78774

RE: Howard Hughes

About ten years ago, we were concerned about the question of Mr. Hughes' California residency status. An investigation was conducted at the time which went so far as to include checking flight logs. It was determined that Hughes was not a resident of California and was not required to file California personal income tax returns.

We maintain personal income tax returns in our files for the statutory period of four years. Any returns that may have been filed by him for the years 1935 through 1966, therefore, have been destroyed.

I am sorry we cannot be of more help to you.

S/S

Martin Huff
Executive Officer

APPENDIX B

OFFICE OF THE CONTROLLER
Kenneth Cory
State Capitol
Sacramento, California

For release November 11, 1977
and thereafter

CONTACT: Carl D'Agostino
(916) 445/2638

SACRAMENTO—State Controller Ken Cory, acting to prevent California from losing its rightful share of the inheritance taxes on the Howard Hughes estate, today announced agreement on one phase of the complex issue and filed suit in the U.S. Supreme Court of another.

Cory revealed that legal officials for the Controller's Office and representatives of the heirs have agreed to a settlement comprising 18% of the Hughes estate, conditioned on the fact that the U.S. Supreme Court judges Hughes was not a resident of Texas.

The Hughes heirs have insisted that Hughes was, before his death last year, a resident of Nevada. Nevada has no state death taxes.

"This agreement means that California agrees to reduce from slightly less than 24% to 18% its claim against the estate, based on the agreement that the Hughes heirs will not contend in the Supreme Court that the eccentric businessman was domiciled in Nevada," said Cory.

Attorneys for the Controller noted that the agreement is conditioned on the U.S. Supreme Court agreeing to decide the controversy between the states of California and Texas. Texas contends that Hughes was a Texas resident and is seeking what amounts to an inheritance tax of 16% on the estate.

The heirs have placed the value of the Hughes estate at $167,000,000. The Internal Revenue Service is presently making an independent determination of value. The IRS value figure will be the basis for California's inheritance tax claim.

"Since three states have claimed Mr. Hughes was a resident of their respective state, we have in good faith reduced our potential claim of 24% to 18% to return for the elimination of one of the contending states," said Cory.

"This agreement is effective only if Texas is judged not to be the Hughes residence," he added. "If Texas should eventually prove the winner in the court test, then California would still retain a claim of 2%," Cory noted.

Since the issue raised by Cory is a dispute between states, the Controller's suit contends the matter is within the original jurisdiction of the U.S. Supreme Court.

Hughes, who died on a charter flight rushing him from Mexico to Texas on April 5, 1976, had been a resident of California virtually continuously from 1926 to 1966. During the 40 year span he amassed a fortune in business dealings ranging from film production to aviation. Hughes was born in Texas in 1905, but moved to California at the age of 20 and only returned to Texas briefly at times during 1933, 1938 and 1949.

From 1966 until his death Hughes traveled a nomadic existence, living at times in Nevada, the Bahamas, Nicaragua, Vancouver, London and eventually, Acapulco, Mexico. His staff—at his wish—shielded him in hotel rooms and he was seldom, if ever, seen in public.

"What we seek by today's suit is final court resolution of where Mr. Hughes lived or intended to live. If federal,

California and Texas death taxes against the estate are honored, the claims will virtually match the estimated value of the estate," Controller Cory noted.

The Cory suit alleges that the states of Texas and California are on a "collision course" which can only be resolved by a Supreme Court decision.

Cory's suit also claims that after Hughes departure from California in 1966 "he formed no personal roots ... living in almost total seclusion in a hotel room from which he seldom, if any, ventured."

Cory also contends that "the usual signs of where one lives permanently or intends to live are not present in this case because of the particular life and travel style of Howard Hughes."

The Cory suit is intended to get the matter before the federal tribunal so that the issue of whether California or Texas will collect an inheritance tax can be clearly resolved.

"We are prepared to show in the U.S. Supreme Court our reasons for believing Howard Hughes was domiciled in California and that the division of his estate ought to reflect that fact," concluded Cory.

APPENDIX C

LAW OFFICES OF
HOWARD, PRIM, RICE, NEMEROVSKI,
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KELLEY GUEST
DIRK M. SCHENKKAN
ANN V. BRICK

ROBERT H. MNOOKIN
OF COUNSEL

November 13, 1977

Hon. Michael Rodak, Jr.
Clerk, Supreme Court of the
United States
Washington D.C. 20543

Re: *California* v. *Texas*
No. 76, Original

Dear Mr. Rodak:

Enclosed is an Application for Temporary Restraining Order and Preliminary Injunction for submission to Mr. Justice Powell, as Circuit Justice for the Fifth Circuit.

I am uncertain whether this Application is governed by the first or second sentence of Rule 35(2). It was a practical impossibility to have it printed over the weekend, and we felt it should be filed and submitted on Monday, November 14, 1977. If you determine that it should be printed, please telephone me collect on Monday, November 14, and I will have it printed immediately, in which event I hope you will nevertheless feel it appropriate to submit it in typewritten form pending substitution of the printed application.

In the expectation that in one way or the other the typewritten application will be submitted, I have enclosed an original and nine copies, the latter for the purpose of providing for the possibility that Justice Powell may elect to refer it to the entire Court.

As noted in the Application, an application for relief is expected to be made by attorneys for the Estate of Howard R. Hughes, Jr. to the Texas court on Monday, November 14. *Please do not submit the instant Application to Mr. Justice Powell until I advise your office by telephone as to the disposition of that application.*

Sincereley,

S/S
JEROME B. FALK, JR.

cc: Governor of Texas
Attorney General of Texas

APPENDIX D

CAUSE NUMBER 139,362

The Estate Of	In The Probate Court
Howard Robard Hughes, Jr.	Number Two Of
Deceased	Harris County, Texas

HEARING ON APPLICATION FOR AUTHORITY TO PAY AMOUNTS DUE FOR SERVICES RENDERED BY MERRILL, LYNCH, PIERCE, FENNER & SMITH, INC., REAL ESTATE RESEARCH CORPORATION, HASKIN AND SELLS, BROWN, WOOD, IVEY, MITCHELL & PETTY AND PATTON, BOGGS & BLOW

BE IT REMEMBERED that on the 19th day of December, 1977, came on for hearing the above entitled and numbered cause before the Honorable Pat Gregory, Judge of the Probate Court No. 2, Harris County, Texas; and all parties appearing in person and/or by counsel, announcement of ready having been made, and all preliminary matters having been disposed of, the following proceedings were had, viz.

APPEARANCES

Andrews, Kurth, Campbell & Jones
Attorney at Law
2500 Exxon Building
Houston, Texas

By: Frank Davis, Esq.
Thomas Schubert, Esq.
William T. Miller, Esq.

Attorneys for Temporary Co-Administrators Offices

Offices of the Attorney General of Texas
Supreme Court Building
Box 12548
Austin, Texas

By: John Hill, Esq.
Bert W. Pluymen, Esq.

Attorneys for State of Texas

Fisher, Roch & Gallagher
Attorneys at Law
Two Houston Center
Houston, Texas

By: Robert H. Roch, Esq.
Craig Lewis, Esq.

Attorneys for Avis Hughes McIntyre and Rush Hughes

Bracewell & Patterson
Attorneys at Law
2900 South Tower
Pennzoil Place
Houston, Texas

By: Ms. Susan Brandt
Mr. Kerry Blair

Attorneys for Barbara Cameron, Agnes Roberts and Elspeth DePould

Butler, Binion, Rice, Cook & Knapp
Attorneys at Law
Esperson Building
Houston, Texas

By: O. Theodore Dinkins, Jr., Esq.
Ms. Linda L. Kelly

Attorneys Ad Litem for the Unknown Heirs of Howard Robard Hughes, Jr., Deceased

Brown, Wood, Ivey, Mitchell & Perry
One Liberty Plaza
New York, N.Y.

By: James B. May, Esq.
Joseph G. Riemer, III, Esq.

Attorneys for Merrill, Lynch, Pierce, Fenner & Smith

[Skipping to the pertinent testimony of Mr. Lummis]

WILLIAM R. LUMMIS,

having been previously duly sworn and cautioned on his oath, resumed the stand and testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. DAVIS:

Q State your name again, please, sir, for the record.

A William R. Lummis.

Q Mr. Lummis, you are one of the Co-Administrators of the estate here in Texas?

A Yes, I am.

Q And then you are Co-Administrator in other jurisdictions as well?

A Yes. I am Co-Administrator in Nevada, Ancillary Administrator in Delaware and Provisional Administrator in Louisiana.

Q In such capacity as Administrator, have you sought and made an agreement with counsel for the State of California in regard to a settlement, a possible settlement, of the claims of California against this estate in regard to inheritance taxes?

A Yes. We have provisionally made such an agreement.

Q And has that agreement been presented to this Court?

A Yes, it has.

Q Who has entered into that agreement, please, sir, other than yourself?

A The agreement is entered into by all the administrators of the estate and by the heirs at law of Mr. Hughes.

Q What was the reason for entering into such a provisional agreement with the State of California, if you will briefly tell us?

A The background of it is that shortly after Mr. Hughes' death and due to the location of his assets, as administrations were initiated in Nevada, Texas, and California simultaneously, subsequently also in Delaware and Louisiana, the administrators, after investigating the facts that were available to them, arrived at the conclusion that Mr. Hughes, at the time of his death, was domiciled in the State of Nevada.

In July, 1976, however, the Attorney General of Texas decided to take the position that Mr. Hughes was domiciled in Texas and, therefore, than an inheritance tax with respect to his estate would be due the State of Texas.

About a year later, in this past summer, in July, 1977, after filing an inheritance tax return in the State of California, in which it was indicated that the administrators took the position Mr. Hughes

was domiciled in Nevada, the State of California notified us that it was going to take the position that Mr. Hughes, at the time of his death, was domiciled in either the State of California or possibly the Bahamas, in either of which case the State of California would assert an inheritance tax.

The Co-Administrators were then on the horns of a dilemma, in that the proceedings are already set in Texas by which the Attorney General would attempt to establish Texas as Mr. Hughes' domicile, and it became apparent to the administrators that the possibility existed that a judgment would come down in the State of Texas to the effect that Mr. Hughes was domiciled and his estate taxable in Texas, which judgment would not be binding upon the State of California; that in a similar proceeding in California, a judgment would come down in a California court to the effect that Mr. Hughes was domiciled and his estate would be taxable in the State of California.

Texas has a sixteen percent inheritance tax. The Federal Government has a seventy-seven per cent inheritance tax, and even allowing for the full credit for the state death taxes paid, if California were also to be successful in establishing its tax, the estate would be confronted with the unhappy circumstances of owing taxes at the rate of one hundred one percent.

The administrators obviously had to take whatever steps they felt could be taken to prevent this result in an effort to preserve the estate for the creditors of the estate and whoever might ultimately own it.

We, therefore, entered into an agreement with

the State of California which achieves the result that we sought. Under that agreement, which is a provisional agreement—and I will go into it later—under that agreement, the administrators agreed to pay an eighteen per cent inheritance tax to the State of California, but the net effect of that agreement is that the estate, rather than incurring a possibility of a total of one hundred one per cent tax, has limited its exposure to a total of seventy-nine per cent. In view of that, we feel that the agreement is certainly one that is in the best interests of the estate. The agreement is provisional in that it is to become effective only if the Supreme Court of the United States agrees to take jurisdiction of the matter to determine whether or not Mr. Hughes was domiciled in Texas at the time of his death.

It is also conditioned upon the approval of this Court, the Court in Nevada, which has been obtained, the Court in California and the Court in Louisiana. Proceedings have been initiated in those courts to obtain their approval.

It is also contingent upon the execution of the heirs of Mr. Hughes, all of whom, with the exception of two, have executed the agreement. As to those two, the State of California, as is permitted under the agreement, has waived their signatures.

The agreement is also contingent upon our being able to obtain from the Internal Revenue Service a ruling to the effect that State death taxes paid to California under that agreement would qualify for the state death tax credits permitted against the Federal estate tax under the Internal Revenue Code.

I think that basically is the background for the

agreement and basically sets forth the agreement. I would like to go one step further and say that for the additional two per cent tax, that the administrators have agreed to incur and a great deal of insurance has been obtained for the administration of this estate.

To say nothing of the differential in rates, which I have already mentioned, California agrees by this agreement to be bound for evaluation purposes by values which are ultimately established for the Federal estate tax.

In the absence of this agreement, it would be possible for this estate to have to go through three extremely lengthy litigations: In Texas, before the Internal Revenue Service and in the State of California. It would be forced to go through these litigations on the sole issue of valuation. This litigation would be extremely expensive and needlessly consume its assets.

So for all of those reasons, I feel strongly that this agreement ought to be approved. The agreement also recognizes possibilities that there may be charitable beneficiaries, or something of that nature, and provisions made for those.

Q If this agreement is approved by the Court, as I understand it the agreement can still be scuttled or terminated if the Supreme Court does not take the case. Is that correct, sir?

A That is correct. It would be null and void in that case.

Q And the State of California has filed a Motion for Leave to file a complaint with the Supreme Court, and that is pending at this time?

A That is correct.

Q Do you know when the State of Texas is due to Answer that complaint, or whether or not they have Answered it at this time?

A I do not believe that they have Answered it. I am not sure when they must.

Q If the domicile question is determined by the Supreme Court, that is, that Texas is not the domiciliary state, then this agreement provides that the estate will pay California eighteen percent. Is that right, sir?

A That is correct.

Q Was there any provision in the agreement for California taking payment in kind in some respects? I know during part of these meetings that I was involved in, that was discussed. Was that ever incorporated in the agreement?

A Well, my recollection is that the agreement does permit payment in installments, but I do not know—I do not recall whether the final draft included payment in kind, but it does permit payments in installments. And, of course, as to that eighteen per cent payable to the State of California, sixteen per cent would be allowed as a credit against the Federal estate tax.

Q And have we agreed with California that we will furnish them with various information they could get, and in some instances had already obtained, such as depositions and this sort of thing, to help them in their case since they are, we think, conferring a benefit upon the estate?

A That is correct. We have made such an agreement.

Q And the only court so far to whom this agreement has been presented has been the one in Las Vegas. Is that right, sir?

A That is correct.

Q And is there any time set for presentation of this to the court in Louisiana and California?

A I am not aware of the scheduling. I know that application has been made.

MR. MILLER: May I respond to that question?

They are having the California hearing today on the agreement, it's my understanding, Your Honor, and the Louisiana hearing would be after the first of the year.

Q (By Mr. Davis) And you do ask the Court to approve this provisional settlement?

A I do.

MR. DAVIS: Thank you. Pass the witness, Your Honor.

THE COURT: Mr. Dinkins?

CROSS EXAMINATION

QUESTIONS BY MR. DINKINS:

Q Mr. Lummis, your counsel, in connection with negotiations of this agreement, is the law firm of Andrews, Kurth, Campbell & Jones of this city. Isn't that correct?

A Yes.

Q In which of your fiduciary capacities does that law firm represent you?

A The law firm represents me in all my fiduciary capacities.

Q It's my recollection that the Andrews, Kurth law firm also represents other members of your family in their individual capacities.

Could you please state those for us?

A Well, the firm represents my mother and various others in the family, in various litigations.

Q Well, what litigation are you referring to?

A I am referring primarily now to the litigation that is ongoing in Nevada, in the contest of the will offered for probate in that state.

Q In other words, they represent other members of, I guess, the maternal side of the family?

A That is correct.

Q In their individual capacities in connection with this will contest litigation?

A Yes.

Q In connection with the position that you have taken for quite some time in this court, the position that Nevada was, in fact, the legal domicile of Mr. Hughes at the time of his death, one of the factors that assume influenced your decision was that issue of double taxation; in other words, the possibility of double taxation.

Are there any other factors—and now I am talking more from a legal standpoint than a factual standpoint—that you can name and—

A Let me interrupt by saying that your assumption is incorrect.

Q I am sorry.

A The issue of double taxation did not enter into my—into the determination that I made as to where Mr. Hughes was domiciled. That decision was made based upon the facts as we have found them, as to where, based upon those facts, Mr. Hughes was domiciled. It was in no way based upon the possibility of double taxation in these other two states.

Q Well, the bulk of the litigation that has been before this court in connection with the domicile claim has related to inheritance taxation. Is that correct?

A Yes.

Q It is my understanding that under the laws of the State of Nevada, there is a different scheme of intestate distribution wherein your mother would be the sole beneficiary of Mr. Hughes' estate.

Does that comport with your understanding?

A That does.

Q Is it your testimony, then, that the determination of Nevada domicile was made without regard to whom might ultimately be entitled to share the assets of the estate under one scheme of inheritance or another? Is that correct?

A I believe that the settlement agreement subsequently reached strongly supports that.

Q Do you recall ever having had any discussions with anyone as to the adverse effect of a determination of Texas domicile in the event some legitimate heir would later appear on the scene, who was not a party to that settlement agreement?

A I don't recall any discussions about it, but I might have recognized it if that is the case.

Q But your testimony is that that contingency played absolutely no part in the domicile position that either your mother as a contestant or you and your mother as temporary administrators have taken before this Court?

A Yes. I am saying to you, to make it perfectly clear, that the effect of the statutes of descent and distribution in the various states, neither those statutes nor the tax statutes played any material role in the determination by the administrators as to where Mr. Hughes was domiciled.

Q It's my understanding of the import of the agreement that the only thing pending before the United States Supreme Court is a determination of domicile for inheritance tax purposes, but that a domiciliary determination for the purposes of intestate distribution and a domiciliary determination for the purposes of determining which state court should be the domiciliary administration in Mr. Hughes' estate is not before the Supreme Court?

A That is correct.

Q Does that comport with your understanding?

A Yes.

MR. DINKINS: Your Honor, could I confer just briefly with Mr. Miller?

(Counsel conferred.)

MR. DINKINS: Thank you, Your Honor.

If it please the Court, I noticed on Page 7 of the application for approval of agreement comprising death tax claims of the State of California, little "i", the first paragraph it says:

"The agreement expressly provides the parties are compromising the inheritance tax claim and are neither making an admission nor purporting to agree as to the state of which decedent was a domiciliary, either for administration or for inheritance tax purposes."

MR. DINKINS: Mr. Miller and I are agreed that the word "tax" should be deleted from that sentence so the sentence would read:

"...of which a decedent was a domiciliary either for administration or inheritance purposes."

We believe that correctly reflects the intent of the agreement.

MR. MILLER: And I would like to so amend the petition to strike the word.

THE COURT: You have to file a trial amendment.

MR. DINKINS: No objection to his trial amendment, Your Honor.

THE COURT: Mr. Pluymen?

MR. PLUYMEN: Your Honor, if a written motion is filed we will respond to it. Are you speaking specifically to the amendment?

THE COURT: Your witness.

MR. PLUYMEN: Excuse me?

THE COURT: Your witness. Mr. Dinkins is through examining the witness. It is your witness.

MR. PLUYMEN: Excuse me, Your Honor. I misunderstood the Court.

CROSS EXAMINATION

QUESTIONS BY MR. PLUYMEN:

Q Mr. Lummis, would you reiterate, if you would, in which states you have any capacity in regard to Mr. Howard Hughes and what those capacities are?

A In Texas I am a Temporary Co-Administrator; in Nevada, I am called a Co-Special Administrator; and in Delaware, I am Ancillary Administrator; and in Florida, I am Provisional Administrator.

Q Did you make application, sir, to obtain all those positions?

A Yes.

Q In any of those positions at any time in any court, have you ever pled that the state of California is Mr. Hughes' domicile?

A No.

Q Is it not correct, sir, that in all your capacities

whenever you have had occasion to plead domicile, you have pled the domicile of Howard Hughes to be the State of Nevada?

A That is correct.

Q The agreement which you are asking this Court to approve, what did that agreement state, in your understanding, as to who gets paid and how much, in terms of taxes, if the United States Supreme Court finds the State of Nevada to be Mr. Hughes' domicile at death?

A If the Supreme Court finds that the State of Nevada was the domicile of Mr. Hughes at the time of his death, California receives eighteen per cent of the tax subject, however, to a ruling to the effect that that tax qualifies for a credit against the Federal estate tax.

Q Did I understand you to say that the State of California receives the eighteen per cent?

A Yes, that is correct.

Q Is that in excess of the amount of tax that will be due ordinarily if the State of Nevada were determined to be the domicile at Mr. Hughes' death?

A Yes. It is two per cent in excess of the total tax that would be due if Mr. Hughes were found domiciled in Nevada.

Q And what is your understanding of the agreement that you are asking this Court to approve? Who would be paid, and how much would they be paid, if the United States Supreme Court decides that the State of Texas is the domicile of Mr. Hughes at death?

A In the event, the State of Texas would receive sixteen per cent; the State of California, two per cent.

Q The State of California would still get two per cent?

A That is correct.

Q And you had never, anywhere at any time, pled that the domicile of Howard Hughes was the State of California. Is that correct?

A That is correct.

Q And what is your understanding of this agreement in terms of what position you have agreed to take in this agreement in the United States Supreme Court should this agreement be approved?

A We have not determined what position we are going to take, except to take the position that we have always taken, and that is that in the late 1920's, Mr. Hughes abandoned his Texas domicile and acquired a domicile of choice in California and we will also present it is my prediction, evidence we have that in 1966 Mr. Hughes abandoned his California domicile and acquired a domicile choice of Nevada.

Q In answer to Mr. Davis' questions, you referred to a quote "agreement to help California" unquote pertaining to depositions, information, et cetera?

A That is correct.

Q Would you please enlighten me as to whether that is a written agreement; if so, where it is?

A I don't know if it is a written agreement. Frankly, I can't recall. I am familiar with the agreement, nonetheless.

Q Have you seen that agreement in writing?

A I saw drafts of it, but I was in Nevada. I do not know what that agreement looks like right now.

Q In other words, you are speaking of an agreement that is totally separate from the application of the agreement you are requesting this Court to approve today?

A Yes.

Q And you have just seen drafts of that agreement, but have not seen the final. Is that correct?

A I am familiar with the substance of it, but I have not seen it.

Q Has that been signed by any of the administrators in Texas or by any of the heirs, that second agreement you are talking about?

A No, not to my knowledge.

Q Do you know where we could obtain a copy of that agreement? It seems to be highly relevant to the agreement that we have before us.

A You might ask Mr. Miller and Mr. Davis about it. I could testify as to the substance of it.

Q If you would, in your own words, please testify as to the substance of that agreement, as far as you can recall.

A I believe the substance of the agreement is that if the United States Supreme Court takes jurisdiction of this matter, we will assist California in establishing the position that I have just mentioned: One, that Mr. Hughes abandoned his Texas domicile and acquired a domicile of choice in

California at one point; two, that in 1966 they will also have what we have developed that Mr. Hughes abandoned his California domicile and acquired a Nevada domicile.

Q You will help the State of California, as well, to establish Nevada domicile in the United States Supreme Court?

A We reserve the right in the agreement to present in the Supreme Court all of the evidence that we have with respect to Mr. Hughes; domicile.

Q Is that the agreement which you are holding in your hand there?

A Yes, it is.

Q Would you mind if I took a look at it?

MR. DAVIS: Fine.

MR. PLUYMEN: Mr. Davis, if you do have another copy I would like to have that marked as an exhibit.

MR. DAVIS: Go right ahead.

MR. PLUYMEN: Please mark that State's Exhibit No. 5. No, it will have to be State's Exhibit No. 7.

(State's Exhibit No. 7 was marked for identification by the reporter.)

Q (By Mr. Pluymen) Mr. Lummis, let me hand you what had been marked as State's Exhibit No. 7, and ask you to identify it.

A I will have to read it. As I have testified, I haven't.

Q That will be fine, sir.

A This is a letter, dated November 10, 1977, from Messrs. Ronald E. Gother, John W. Armogost, and William T. Miller, to Mr. Jerome B. Falk, Jr.

Q Does this letter reflect that written agreement that you referred to earlier, which is an addition to the agreement that is before the Court?

A Yes.

Q And what is your understanding of that agreement, sir?

A Well, the agreement—

Q Reflected in State's Exhibit 7.

A Well, the agreement outlines the degree to which and the manner of cooperation that has been agreed to in the event that the Supreme Court accepts jurisdiction between the parties to the agreement.

Q Would you please explain to the Court your understanding of your obligations under State's Exhibit No. 7?

A I would rather answer the question by referring to the letter. I could read it. If you would like me to read the letter, I will do it, but, as I understand it, it is already part of the record and the letter says what it says.

Q Does that correctly reflect the obligations which you consider yourself to have?

A Yes.

Q Mr. Lummis, are there any other written agreements that you are aware of?

A No.

Q Anything pertaining to the agreement in the United States Supreme Court and the one before the Court today?

A No.

Q Are there any unwritten agreements of which you are aware?

A No.

MR. PLUYMEN: Your Honor, if I might take a minute I would like to read this myself.

(Pause.)

Q (By Mr. Pluymen) According to this letter, Mr. Lummis, you have agreed with the State of California to provide the State of California with all documentary material you have collected to date. Is that correct? Was that your understanding?

A Under the various conditions set forth in the letter, yes, and at the various times set forth.

Q But even prior to the time the United States Supreme Court rules on California's petition for leave to file a complaint, even prior to that time you will provide the state of California with all materials that you have collected pertaining to Mr. Hughes' domicile. Is that correct?

A No. I believe it says "certain material."

Q All material pertaining to your claim which you mentioned just a moment ago, that Mr. Hughes' effective domicile was California.

A Oh, yes, that is correct.

Q And once the United States Supreme Court takes the case, if it should so do, then you will provide the State of California with all factual and legal analysis which you prepared regarding your claim that Hughes was Nevada domiciliary, including depositions and legal memoranda, written analyses of any local and factual issues bearing on the domicile questions; in other words, at that point you will provide them with all material pertaining to your claim that Mr. Hughes abandoned California and moved to Nevada and effected his choice of domicile there. Is that correct?

A That is my understanding of what it says.

Q And, in addition, attorneys from your office will be made available for consultation with the State of California in aid of California's litigation against Texas. Is that correct?

A That is correct.

Q In the United States Supreme Court?

A Yes.

Q All this aid which you have reflected in State's Exhibit No. 7, that is definitely a benefit to the state of California—that is my statement—and you also promised to pay the State of California, in the agreement before the Court, eighteen per cent of the estate even if Nevada is determined to be the domicile; two per cent if the State of California is determined to be the domicile; and you have not pled California domicile anywhere at any time.

Would you please tell the Court what possible benefit accrues to the estate by your giving away two per cent of the estate, in addition to all the other

help you are giving the State of California?

A I certainly will. The question as to where Mr. Hughes was domiciled cannot be answered with absolute certainty. In the absence of this agreement, as I have already indicated, the administrators of this estate could possibly be administering and estate that could incur death tax liability of one hundred two per cent of the estate. By entering this agreement, this additional two per cent, we establish the maximum death tax rate applicable to this estate at seventy-nine per cent. The California inheritance tax rate is twenty-four per cent. I think it is quite clear what benefit is derived from this agreement by the estate. As a matter of fact, I think it would be highly improper and negligent of the administrators not to make an agreement of this type.

Q Isn't it correct, Mr. Lummis, that the State of California has a petition for leave to file a complaint pending before the United States Supreme Court?

A Yes, sir.

Q And isn't it correct that if the United States Supreme Court accepts that petition and permits California to file a complaint against the State of Texas, that irrespective of what this Court does with respect to the agreement you are asking this Court to approve, that the estate will not be liable anywhere near one hundred one or one hundred two per cent of taxation, if the United States Supreme Court takes that case?

A Subject to the other conditions of the agreement.

Q Let me rephrase the question: If the United States Supreme Court grants the petition by the State of

California to file a complaint against the State of Texas and at the same time, just irrespective of this agreement that you are asking this Court to approve, if the United States Supreme Court takes the case, absent this agreement isn't it correct that the estate will not be liable for in excess of one hundred per cent in taxation, because the Supreme Court will decide Texas or California or Nevada, or whatever, and that will remove the auger of double-taxation from the estate. Isn't that correct.

A The application with the Supreme Court by California has been filed pursuant to this agreement. You can't ignore this agreement.

Q Are you saying that the State of California filed its petition for leave to file a complaint based on this agreement?

A This agreement certainly affects California.

Q In other words, the estate is paying California two per cent to file a complaint in the United States Supreme Court. Is that correct?

A You can characterize it any way you wish. The agreement says what it says. The administrators of the estate have consented, by the agreement, to incur a maximum tax against the estate, of seventy-nine per cent, to avoid the specter of a tax of one hundred one per cent. It is just that simple.

Q Well, it may be that simple to you, but you are not making it very clear to me and I want to try it again.

If this agreement were not in existence and the United States supreme Court granted a petition for leave to file a complaint, which is pending before the United States Supreme Court, and the Court

grants that position, isn't it correct that the estate will not be subjected to double taxation?

A I'm not going to hypothesize or testify as to events that aren't, in fact, what we have before us.

Q Mr. Lummis, let me hand you what has previously been marked as State's Exhibit No. 1 in this proceeding. It's motion for leave to file a complaint by the State of California against the State of Texas in the United States Supreme Court.

Now, again, sir, if the Supreme Court grants that petition, isn't it correct that the estate will not be subject to bouble-taxation?

MR. DAVIS: Your Honor, I object to that as repetitious. That is not correct, because the Supreme Court might say Texas is not, and if we don't have this agreement we might end up paying California fourteen per cent when they try us out there.

MR. PLUYMEN: Your Honor, Mr. Davis is trying to coach the witness.

MR. DAVIS: Your Honor, that is what the agreement says and we are trying to speculate now what the law would be and what would happen.

THE COURT I can speculate on it as well as anybody. We can all deal in speculation. Let's get on with it.

Q (By Mr. Pluymen) Mr. Lummis, are you aware that the State of California filed an application for temporary restraining order and temporary injunction to enjoin this proceeding in the United States Supreme Court?

A Yes.

Q Are you aware of the United States Supreme Court's ruling?

A Yes.

Q You're aware of the ruling on that application by the State of California?

A Yes. It has denied that application.

Q What was your position, as an administrator and as a potential heir, in regard to the application for TRO and temporary injunction filed by the State of California in the United States Supreme Court?

A What was my position?

Q Yes, sir.

A I believe the action was brought by the State of California. I didn't have a position stated in that application.

Q Did you take any position in regard to the application for a temporary restraining order or a temporary injunction, whether in that application itself or whether ancillary thereto?

A I took a position that I had no objection to it and I had no objection to the Supreme Court acting affirmatively with respect to it.

MR. PLUYMEN: I have no further questions, Your Honor.

THE COURT: Mr. Roch?

CROSS EXAMINATION

QUESTIONS BY MR. ROCH:

Q Mr. Lummis, I believe it is correct, is it not, that my client, Mr. McIntyre and Rush Hughes, have not entered this agreement. Is that correct?

A That is my understanding.

Q I believe that you testified here that the requirement to become a party to this agreement has been waived by California.

A Yes, that is correct.

Q When was that done? When was that waiver done, Mr. Lummis?

A I don't know when the waiver was done. I was informed of it by Mr. Falk on Friday.

Q This last Friday?

A Yes.

Q Has it been done in writing? Because I haven't been informed of it. I didn't know anything about it. I hadn't heard of it.

MR. MILLER: I haven't received anything.

THE WITNESS: I have not seen it, but it's a matter of record in that proceeding in Nevada. I will so represent it to the Court. I have seen no writing about it, but Mr. Falk has told me that the State of California has waived the rejoinder of your clients.

Q I just notice the agreement itself apparently calls for it in writing, and I was wondering whether or

not he had written a letter and, if he had, if I would get a copy.

Just for the record, Mr. Lummis, I have never seen or heard of this agreement until this moment.

MR. ROCH: I have no further questions.

THE COURT: Ms. Brandt?

MS. BRANDT: Your Honor, we have no questions of this witness.

THE COURT: Mr. Davis?

MR. DAVIS: Thank you, sir. I would like to ask a few more, Your Honor.

REDIRECT EXAMINATION

QUESTIONS BY MR. DAVIS:

Q In regard to this letter agreement between counsel, Mr. Lummis, the first thing it says we will forward to California, at this stage to the State of California or their counsel, I should say, all pleadings and other documents filed in the Probate Courts.

Are these public records that California could obtain?

A Yes, they are.

Q Do you know why we agreed to furnish these to them and not put them to the expense of obtaining copies formally?

A I think the agreement was made so as to not needlessly inconvenience them and put them to needless expense obtaining matters to which they had easy access.

Q And it calls for all depositions taken in connection with the litigation.

Are you aware that they already had, at the time I first talked to them, nine depositions that had been taken in this case?

A I was aware that they had some depositions.

Q And one of those depositions was Mr. West's, and then I think a number of the so-called aids or assistants to Mr. Hughes, they had some of those depositions.

Do you know where they obtained those?

A I don't.

Q And all documents produced by any party thereto.

Were may of these documents already in California and subject to their discovery, if we had put them to the necessity of making formal discovery?

A It is my understanding that they were.

Q And we specifically indicate in this letter agreement between counsel that we are not going to tell them our theories of the law or our analysis of fact. Is that right, sir?

A That is correct.

Q And we don't do that as long as we are potential adversaries and they might sue us in the State Court in California. Isn't that correct, sir?

A That is correct.

Q Are we then just entering into an agreement to give

them informally what they could obtain formally and doing that because we feel they are bestowing some benefit on us by alleviating the necessity of our trying this case twice?

A Indeed.

Q Were you aware that Mr. Hill, in the course of the trial on domicile, asked me whether or not we would raise our agreement to California to pay them twenty per cent instead of eighteen per cent so that he might have a chance to get a part of that twenty per cent? Were you aware that he slid me a handwritten note to that effect?

GENERAL HILL: If Your Honor please, I guess just because I came into the courtroom again his mind starts clicking.

MR. DAVIS: I didn't even see him, Your Honor.

GENERAL HILL: Certainly, if Mr. Davis wants to go into all of the California business—

THE COURT: Well, it is not a part of redirect, Counsel. Sustain the objection.

Q So far as you know, has some information—let me ask this: As of the date of this agreement of November 10, 1977, had we, as counsel, forwarded certain information to California at that time, certain documents and things? Are you aware of that?

A That is my understanding, yes.

Q In this regard, we have never pled California as the domicile. Is that true? Is it true that we have never pled California as the domicile on the date of death, but we have indicated that we think he acquired

and adopted domicile in California one or more times in his lifetime?

A That is correct.

MR. DAVIS: All right. Thank you, sir. I will pass the witness.

GENERAL HILL: Mr. Lummis—

THE COURT: Just a minute, General. Mr. Dinkings?

MR. DINKINS: Your Honor, I have just one or two questions and I will try to be brief.

Q (By Mr. Dinkins) Mr. Lummis, you are aware, are you not, that one of the heirs on the maternal side is a minor and is, therefore, without the legal capacity to approve this or any other agreement? Is that correct?

A Yes, that is correct.

Q Do you know whether or not California has taken a position with respect to that minor?

A They have been made aware of that matter and have waived that joinder, as I understand the matter.

Q Referring to the letter dated November 10, 1977, which has been introduced in these proceedings—

THE COURT: It has not been introduced.

MR. PLUYMEN: It has just been marked.

MR. DINKINS: My correction, Your Honor.

Q (By Mr. Dinkins) Referring to that letter, it states in the course of our representation of the Nevada Co-Special Administrators in the Howard Hughes

estate, that "...we have amassed a significant amount of factual information and legal analysis which you have recognized may be of assistance to you in your suit against Texas in the United States Supreme Court," and it is signed by Mr. Ronald E. Gother, Mr. John W. Armogost and Mr. William T. Miller.

Are those parties signing that letter signing in their capacity as attorneys for the Nevada Co-Special Administrators?

A To some extent Mr. Miller is, yes.

Q But not Mr. Gother and Mr. Armogost?

A That is correct.

Q Is the significant amount of factual information and legal analysis referred to in the letter in substance the material that has been derived through discovery proceedings before this Court?

A I am sure a great deal of it has been. The material referred to is material that has been gathered by the attorneys, and I am not familiar with all of it and so I can't quantify what has been obtained where and in connection with what proceeding.

Q But at least a portion of it could well be material discovered in connection with proceedings here in Texas. Is that correct?

A Yes. I think a great deal of it was material that was obtained in attempting to respond to the discovery orders of this Court, at the request of Attorney General Hill.

MR. PLUYMEN: General Hill wants to ask him a few questions.

THE COURT: Ihave a rule of practice that says whatever lawyer begins with a witness in a contested proceeding, that lawyer remains with that witness.

RECROSS EXAMINATION

QUESTIONS BY MR. PLUYMEN:

Q Isn't it correct that the estate has agreed to pay the Court of California two per cent to file that suit in the United States Supreme Court?

A That question you put to me a few moments ago, and I believe I would like to have my answer to it read back to you.

Q Well, I wish you would answer that again because I don't believe you answered the question the last time.

A Well, let's have it read back and let me see if I did.

MR. PLUYMEN: Your Honor, I would ask the Court to—

THE COURT: You would what?

MR. PLUYMEN: I would ask the Court to instruct the witness to answer the question.

THE COURT: I think he has answered it. I am well aware of his position from his testimony.

MR. PLUYMEN: No further questions, Your Honor.

THE COURT: Is there anything further from this witness?

Mr. Roch? Ms. Brandt?

The witness may step down.

Call your next witness.

MR. DAVIS: Call Mr. Pluymen.

Is it all right for Mr. Lummis to be excused, Your Honor?

THE COURT: Any objection?

GENERAL HILL: Yes, we object. I have not had a chance to talk with Mr. Pluymen, and I would like that opportunity. Certainly I don't make my statement to just simply unnecessarily take his time, but I assume that we will have an opportunity to put on a case, perhaps, and, if do, then I want at least to discuss it with Mr. Pluymen as to whether we want to call Mr. Lummis. If you can give me five or ten minutes after we adjourn, then I can let Mr. Davis know whether we can release him or not.

MR. DAVIS: This is fine.

THE COURT: Proceed.

APPENDIX E

AGREEMENT PROVISIONALLY COMPROMISING DEATH TAX CLAIM OF THE STATE OF CALIFORNIA

THIS AGREEMENT is made as of November 10, 1977, between Kenneth Cory, Controller of the State of California (hereinafter "California"); the undersigned Administrators of the Estate of Howard R. Hughes, Jr. ("the Estate") in the States of California, Texas, Nevada, Louisiana and Delaware (hereafter "the Administrators"); Annette Gano Lummis, individually and in the capacity of Designating Authority under that certain agreement, entitled "Settlement Agreement", the Ancillary Agreement thereto, and all amendments thereto, between certain of the intestate heirs of Howard R. Hughes, Jr.; and the undersigned individuals who are or claim to be the intestate heirs of Howard R. Hughes, Jr. (hereinafter "the Heirs"). The Agreement is made with reference to the following agreed facts:

A. Howard R. Hughes, Jr. (hereinafter "Decedent") died on April 5, 1976. Administration of the Estate has been commenced in Texas, Nevada, California, Louisiana and Delaware and one or more of the Administrators have been appointed as administrators in each of those jurisdictions. The parties believe that Decedent died intestate, although contrary claims have been asserted which have yet to be adjudicated.

B. Because of the unique manner in which Decedent lived and conducted his business and personal affairs, the ambiguity of the domicile concept, and for other reasons as well, there is substantial uncertainty as to the correct state of his domicile for purposes of death taxation. The State of Texas claims that Decedent was a domiciliary and accordingly seeks to levy death taxes at

the rate of nearly 16%. California claims that Decedent was a domiciliary and accordingly seeks to levy death taxes at graduated rates up to 24%, this highest rate being applicable for all assets in excess of $400,000. California further contends that if Decedent was a domiciliary of a jurisdiction outside the United States, certain substantial death taxes would be owed to it because of the situs for inheritance tax purposes of certain substantial assets in California. The Administrators and most of the Heirs contend that Decedent was a domiciliary of the State of Nevada, which imposes no death taxes, and all of the Heirs contend that only a limited amount of assets have their situs in California for inheritance tax purposes. The facts are sufficiently complex and uncertain that the contentions of California and the Administrators and the Heirs are substantial and are asserted in good faith. Absent agreement of the parties, the dispute as to domicile between California and the Administrators and Heirs would have to be the subject of costly and prolonged litigation in the courts of California, the outcome of which is by no means certain.

C. The death tax claim of the State of Texas, based on its assertion of a Texas domicile, presents a threat to the ability of California to collect the death taxes claimed by it because the assets of the Estate are insufficient to satisfy the aggregate tax claims of the United States, California and Texas. California has elected to invoke the original jurisdiction of the Supreme Court of the United States under the authority of *Texas* v. *Florida*, 306 U.S. 398 (1938) to obtain a determination that Texas is not the state of domicile for purposes of death taxation. If the Supreme Court should accept jurisdiction and determine whether or not Texas is entitled to impose a death tax based on domicile, the Heirs and Administrators will be willing to compromise the death tax claim of California on the basis hereafter

set forth.

D. Despite the objections of the Heirs, California has required, as a condition of entering into this Agreement, that the Heirs become parties hereto to assure to it the enforceability of this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. The following agreement is made upon the condition that the Supreme Court accepts jurisdiction of California's action described above and actually renders a judgment which adjudicates the issue of whether Decedent was or was not a Texas domiciliary on the date of his death. If that condition is not and cannot be fulfilled, this Agreement shall be of no force and effect and, *inter alia*, California will be free to assert, and the Administrators and Heirs will be free to resist, its tax claims based on the maximum rate of 24% and its contentions as to the domicile of the Decedent.

2. Subject to the conditions herein set forth, and provided that the Supreme Court renders a judgment which determines that Texas was not the state of Decedent's domicile on the date of his death, the Administrators, on behalf of the Estate, and the Heirs, agree that from the assets of the Estate, there shall be paid to California, in full settlement and compromise of its death tax claim, an amount equal to eighteen percent (18%) of the net taxable estate as defined in Section 2051 of the Internal Revenue Code and as finally determined in accordance with the Internal Revenue Code for federal estate tax purposes, less the sum of all death taxes imposed by states other than California with respect to real property (including fixtures) located outside of California. Said tax may be payable in installments and shall bear interest as hereinafter provided. California agrees to accept the payments

provided for in this paragraph 2 and in paragraph 3 below in satisfaction of any and all claims on behalf of California for inheritance, estate and any other form of death taxes (including interest and penalties) due from the Estate and all beneficiaries thereof when actually received by it free of escrow.

3. The tax payable hereunder, at the option of the Administrators, may be paid in installments and if so paid shall be paid on or before the payment of each installment (including deficiencies) of the Federal Estate Tax against which the installment of the tax payable hereunder is to be claimed as a credit, and shall bear interest from January 5, 1977, to the date of payment at the rate or rates applicable to each such installment of the federal estate tax under Section 6621 of the Code. Accrued interest shall be paid at the time of each of said installments. Until the conditions set forth in paragraphs 1, 8 and 9 have been satisfied or waived and the expiration of the last applicable period of limitations specified in subsection (c) of Section 2011 of said Code, the Administrators shall have the further option to pay any installment of the tax payable hereunder, together with accrued interest, to Security Pacific National Bank ("escrow agent") or such other national or state banking association with its principal office in the State of California as California and the Administrators may agree. An escrow agreement shall be entered into between California and the Administrators, and shall not be for the benefit of any person, entity or state not a party to this Agreement. All amounts held subject to such escrow agreement (hereinafter referred to as "the Fund") shall be invested solely in U.S. Treasury notes, bills and bonds, as California shall direct. In the event that the installment(s) of taxes and interest actually paid hereunder shall be less or more than that payable from

time to time because of a final determination recomputing the net taxable estate as heretofore reported, the deficiency shall forthwith be paid over to the Fund in accordance with paragraph 2 or the excess (plus the interest attributable thereto) shall be refunded by the escrow holder (or by California, if the Fund has been paid over to it) to the Administrators (in accordance with their respective contributions to the Fund) as the circumstances may require. Notwithstanding the foregoing, the Administrators shall have the right to direct the escrow holder to pay all or any part of the Fund to California.

4. The liability of the Administrators for the payment of taxes or interest as provided herein shall be limited to that imposed upon them in their representative capacity. The personal liability of each Heir for such taxes and interest shall be limited to the value of assets distributed to such Heir from the Estate as of the date or dates of distribution. The taxes and interest payable hereunder shall be paid from assets of the Estate by the Administrators in the manner provided by law.

5. At such time as no reasonable prospect exists that the conditions set forth in paragraphs 1, 8 and 9 hereof can be satisfied, the Fund and all interest accrued therein shall be paid over to the Administrators in proportion to their respective contributions to the Fund. In the event that the Supreme Court shall determine that Texas was the state of domicile, there shall be paid from the Fund to the Administrators in the abovementioned proportions an amount equal to the lesser of (i) the tax claim of the State of Texas, as finally determined, including all amounts of interest and penalties thereon ("the Texas tax") or (ii) the amounts in the Fund. Upon such payment to the Administrators, all amounts (a) remaining in the Fund, and (b) which under

paragraphs 2 and 3 hereof would be payable to the Fund but for the finding of Texas domicile by the Supreme Court less the amounts paid or payable to Texas in satisfaction of the Texas tax, if any, shall be paid over to the State of California in full settlement and compromise of all death tax claims which could be asserted by it even if Decedent were not a domiciliary of California. At such time as the conditions set forth in paragraphs 1, 2, 8 and 9 have been satisfied and there has either been a final determination in each of the Probate Courts (as defined in paragraph 8(b)) that Decedent died intestate, or a final determination of the net taxable estate, whichever first occurs, the escrow shall terminate and the assets of the Fund shall be paid over to California.

6. Notwithstanding that a condition of this Agreement is a determination by the Supreme Court on the question of whether Texas is the state of domicile as set forth in paragraph 2 above, said condition shall be deemed waived in the event that Texas and California agree upon a division of the amounts payable pursuant to paragraph 2 in full settlement of their respective death tax claims, including a full release of the Estate and the Heirs with respect thereto.

7. The Administrators and the Heirs agree not to contest the claim of California in the Supreme Court proceeding referred to above that Decedent did not die domiciled in the State of Texas.

8. This Agreement is subject to the following conditions, the first of which may be waived by California, in its sole discretion, but only by a writing addressed to the Administrators and the Heirs:

(a) Execution of this Agreement by all of the Heirs, whose names are stated in paragraph 21(d)-(g) below, on or before November 30, 1977.

(b) Approval of this Agreement and the payment of all taxes due and payable hereunder by the Superior Court of the State of California, County of Los Angeles, the Eighth Judicial District Court of Clark County, Nevada, and Probate Court No. 2, Harris County, Texas ("the Probate Courts").

The Administrators and the Heirs who have executed this Agreement shall use their best efforts to satisfy the above conditions and the condition set forth in paragraph 9 below.

9. This Agreement is subject to the condition, which may be waived by the Administrators, in their sole discretion, by a writing addressed to California, that the Administrators obtain a ruling from or, at the option of the Administrators, enter into a closing agreement with the Internal Revenue Service that the amounts payable hereunder qualify (subject to the limits provided by the Internal Revenue Code) for the credit specified in Section 2011 of the Code.

10. The Administrators and the Heirs agree that as a consequence of the provisional death tax liability to California hereunder, California has a substantial interest in a fair and accurate determination of the value of the net taxable estate. They agree that, subject to the concurrence of the Internal Revenue Service, California may participate in all administrative and judicial proceedings, formal and informal, which the Internal Revenue Service and/or the courts having jurisdiction will undertake or conduct in order to audit the estate tax return, value the assets, and determine the net taxable estate. It is understood that the Administrators intend, and shall have right, to vigorously defend the net taxable estate as reported in the estate tax return heretofore filed. The Administrators and the Heirs will provide to California copies of all documents filed with or received

from the Internal Revenue Service in relation to such matters and will furnish California with as much prior notice as is reasonably possible of all hearings, meetings, conferences, or other events at which representatives of the Estate or the Internal Revenue Service will be present. The Administrators and Heirs hereby waive such rights as they possess under the Federal Privacy Act or any other law to the extent that such waiver is necessary or appropriate to permit the Internal Revenue Service to fully share with California all information concerning the Estate.

11. This Agreement is not intended by the Administrators to reflect the recognition of any particular jurisdiction as the domicile of the Decedent for purposes of administration of Decedent's estate, but is entered into solely for the purpose of resolving a disputed tax claim. No representation or assertion, either express or implied, concerning the domicile of the Decedent as of the date of his death, shall be attributable to any Heir as a consequence of this Agreement.

12. The execution of this Agreement by each of the Administrators shall be of no force and effect unless specifically approved by the Probate Court having jurisdiction.

13. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California.

14. The Heirs agree that they will be amenable to suit in the Superior Court of the State of California, and hereby consent to its jurisdiction, in the event and only in the event that suit is brought by California to enforce any provision of this Agreement.

15. This Agreement may not be modified except by a writing executed by the parties hereto. All parties hereto acknowledge for the benefit of California that Annette

Gano Lummis as Designating Authority, or her successor Designating Authority, has the power to act on behalf of the Heirs in relation to any such modifications and in execution of the provisions of paragraph 16 hereof.

16. The parties hereto agree to execute any documents and take any and all actions necessary or desirable to effectuate the purposes of this Agreement and to obtain all necessary consents and approvals incident thereto.

17. The Administrators and the Heirs stipulate and agree that, at such time as the amount of tax payable to California in accordance with this Agreement is capable of being ascertained, the Superior Court of the State of California, County of Los Angeles, shall enter an Order fixing and assessing the tax in accordance with this Agreement. Said Order shall be binding on all parties hereto.

18. All of the terms, provisions and obligations of this Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, representatives, successors and assigns.

19. In the event this Agreement shall not for any reason become effective as contemplated herein, no provision hereof shall constitute any admission against interest as related to any contest of the purported wills of Decedent, or any proceeding in which the domicile of Decedent is an issue or for any other purpose whatsoever, and shall not be admissible in evidence for any purpose in any proceeding in law or in equity.

20. This Agreement may be executed in counterparts. To facilitate execution, the original executed agreement with all signatures assembled thereon shall be deposited with counsel for California and held by him for the benefit of all parties. Counsel for California will provide the

parties with a conformed copy, the authenticity of which shall be certified by him, and the parties hereto stipulate that such conformed and certified copies shall for all purposes be deemed to be authentic as if the original signature copy.

21. All notices, demands, deliveries and other communications hereunder shall be in writing and shall be deemed to have been duly given or made, as the case may be, when delivered or when mailed by United States registered or certified mail, postage prepaid, addressed to the parties at the following addresses of counsel for the respective parties (or such other addresses as may be designated by written notice given in the manner aforesaid):

(a) To the Controller of the State of California:

Jerome B. Falk,Jr.,
Howard, Prim, Rice, Nemerovski, Canady & Pollak
A Professional Corporation
650 California Street, Suite 2900
San Francisco, California 94108

(b) To Richard C. Gano, Jr., Special Administrator:

Ronald E. Gother
Gibson, Dunn & Crutcher
515 South Flower Street
Los Angeles, California 90071

(c) To William R. Lummis, Co-Special Administrator in Nevada, Temporary Co-Administrator in Texas, and Ancillary Administrator in Delaware, and Provisional Administrator in Louisiana; to First

National Bank of Nevada, Co-Special Administrator in Nevada; and to Annette Gano Lummis, Temporary Co-Administratrix in Texas:

William T. Miller
Andrews, Kurth, Campbell & Jones
Suite 2500 Exxon Building
Houston, Texas 77002

(d) To William Kent Gano, Richard C. Gano, Jr., Doris Gano Wallace, Annette Gano Gragg, Howard Hughes Gano, Annette Gano Lummis, Allene Lummis Russell, Annette Gano Lummis Neff, William Rice Lummis, Frederick Rice Lummis, Jr., Janet Houston Davis, Sara Houston Lindsey and Southern National Bank of Houston, Independent Executor of the Estate of James Patrick Houston, Jr., Deceased:

Morse, Foley and Wadsworth
Suite 700 First National Bank Building
302 East Carson Avenue
Las Vegas, Nevada 89101

(e) Richard Alexander Houston (by his Guardian, Marian Fleming Houston Comstock):

O. Theodore Dinkins, Jr.
Butler, Binion, Rice, Cook & Knapp
1100 Esperson Building
Houston, Texas 77002

(f) Barbara Cameron, Elspeth DePould and Agnes Roberts:

John W. Armagost
Kindel & Anderson
555 South Flower Street
Los Angeles, California 90071

(g) To Avis Hughes McIntyre and Rush Hughes:

Robert H. Roch
Fisher, Roch & Gallagher
2600 Two Houston Center
Houston, Texas 77002

22. The parties to this Agreement have been advised by their respective counsel, whose names appear in paragraph 21 above, in connection with the negotiation and execution of this Agreement.

S/S (by Jerome B. Falk, Jr.)

Kenneth Cory, Controller of the
State of California

THE ADMINISTRATORS:

William R. Lummis, Co-Special Administrator in Nevada, Temporary Co-Administrator in Texas, Ancillary Administrator in Delaware, Provisional Administrator in Louisiana

First National Bank of Nevada, Co-Special Administrator in Nevada

Annette Gano Lummis, Temporary Co-Administratrix in Texas

Richard C. Gano, Jr.,
Special Administration in
California

THE HEIRS:

Annette Gano Lummis,
in her capacity as
Designating Authority

William Kent Gano

Richard C. Gano, Jr.

Doris Gano Wallace

Annette Gano Gragg

Howard Hughes Gano

Annette Gano Lummis

Allene Lummis Russell

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Annette Gano Lummis Neff

William Rice Lummis

Frederick Rice Lummis, Jr.

Janet Houston Davis

Sara Houston Lindsey

Southern National Bank of Houston,
Independent Executor of the
Estate of James Patrick Houston,
Jr., Deceased

Richard Alexander Houston,
by his Guardian, Marian
Fleming Houston Comstock

Barbara Cameron

Elspeth DePould

Agnes Roberts

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Avis Hughes McIntyre

Rush Hughes

APPENDIX F

GIBSON, DUNN & CRUTCHER

LAWYERS

515 SOUTH FLOWER STREET

LOS ANGELES, CALIFORNIA 90071

—

(213) 488-7000

TELEX: 67-4930

CABLE ADDRESS: GIBTRASK

November 10, 1977

WRITER'S DIRECT DIAL NUMBER
(213) 488-7322

Mr. Jerome B. Falk, Jr.
Howard, Prim, Rice, Nemerovski,
Canady & Pollak
650 California Street, Suite 2900
San Francisco, California 94108

Re: *Hughes Estate*

Dear Jerry:

In the course of our representation of the Nevada Co-Special Administrators of the Estate of Howard Hughes ("Nevada Administration"), we have amassed a significant amount of factual information and legal analysis which you have recognized may be of assistance to you in your suit against Texas in the United States Supreme Court. With our client's consent, based on your insistence that the following is fundamental to achievement of the purpose of the Provisional Agreement (the "Agreement") we are prepared to

furnish you with the following information, under the terms and conditions set forth herein:

We, as counsel for the Nevada Administration, will immediately cause to be prepared, and delivered to you as promptly as possible, copies of all of the following documents under our control in which our client has an interest or which are public information: (a) all pleadings and other documents filed in the Probate Courts (including correspondence with said Courts); (b) all depositions taken in connection with the litigation pending in the Probate Courts relating to the Estate; and (c) all documents produced by any party thereto relevant to the issue of domicile.

The materials furnished you pursuant to the preceding paragraph shall be accompanied by such indices of the public documents as we have prepared so as to enable you to organize and assimilate these materials in the minimum possible time.

Until the Supreme Court grants California's motion for leave to file its complaint against Texas, we remain potential adversaries in the California courts. Until the Court accepts jurisdiction, we will not be able to share with you the legal contentions and factual analyses supporting our position that Hughes dies domiciled in Nevada. We will, however, make available to you for inspection the materials we have prepared supporting the claim that Hughes acquired a California domicile upon leaving Texas.

Once the Court accepts jurisdiction of California's complaint, we will share with you all factual and legal analyses which we have prepared regarding our claim that Hughes was a Nevada domiciliary, including deposition summaries, legal memoranda and written analyses of any legal or factual issues bearing on the

domicile question. These materials will be made available to you for inspection, but copying of these documents will not be permitted. In addition, attorneys from our offices will be available for consultation with you, should you desire, in aid of your litigation against the State of Texas.

None of the information made available to you hereunder shall be used for any purpose other than the assertion and collection of the payment of tax to California hereunder.

It is our understanding that in the event that the Supreme Court accepts jurisdiction of the proceedings, it is your present intention not to resist the motion of the Nevada Co-Special Administrators to become a party to such proceeding, on the condition that such Co-Special Administrators align themselves with you and take no position inconsistent with that of the State of California in the matter, but it is understood that you will make that determination at the time that such a motion is made in the best interests of your client and that a major consideration of said determination will be the effect thereof on the court's retaining jurisdiction of the proceeding.

We have discussed the possibility that one or more of the Probate Courts may refuse to approve the Agreement so long as taxes in excess of the maximum federal tax credit allowed by Section 2011 of the Internal Revenue Code are required to be paid by the Estate. In this event, we will use our best efforts to obtain the agreement of the Administrators and the Heirs to a modification of the Agreement reducing the tax paid by the Estate pursuant to paragraphs 2 and 3 of the Agreement to the maximum allowable tax credit, and providing that the balance will be paid by the Heirs when and as sufficient funds are distributed by the

Estate to them. In the event of such modification the condition set forth in paragraph 8(b) of the Agreement shall be waivable solely by the Administrators.

Very truly yours,

S/S
Ronald E. Gother

S/S
John W. Armagost

S/S
William T. Miller